IN RE ARBITRATION BETWEEN:

TEAMSTERS LOCAL 320

and

CLEARWATER COUNTY

DECISION AND AWARD OF ARBITRATOR

BMS # 15-PN-0652

JEFFREY W. JACOBS

ARBITRATOR

January 13, 2016

IN RE ARBITRATION BETWEEN:

Teamsters Local 320

and

Clearwater County

DECISION AND AWARD OF ARBITRATOR
BMS Case # 15-PN-0652

APPEARANCES:

FOR THE UNION:

Patrick Kelly, Attorney for the Union
Martin Norder, Attorney for the Union
Delores Sundquist, Union Steward

FOR THE COUNTY:

Terrence Foy, Attorney for the County
John Nelson, County Commissioner

PRELIMINARY STATEMENT

The parties were unable to resolve certain issues concerning the terms of the collective bargaining agreement and requested mediation from the Bureau of Mediation Services. Negotiation sessions were held and the parties negotiated in good faith but were ultimately unable to resolve certain issues with respect to the labor agreement. The Bureau of Mediation Services certified 1 issue to binding interest arbitration pursuant to Minn. Stat. 179A.16, subd. 7 by letter dated June 26, 2015.

The hearing in the above matter was held on December 11, 2015 at the Clearwater County Offices in Bagley, Minnesota. The parties submitted briefs that were received by the arbitrator on January 4, 2016 at which point the record was closed.

ISSUES PRESENTED

The issue certified at impasse and in dispute at the time of the hearing are as follows:

1. What should the County contribution be for the Health Insurance premium for 2015?

Health Insurance Increases

UNION'S POSITION

On the issue of the percentage of contribution for health insurance premium for 2015, the union's position was that the current 65-35% split for health increases should remain in place. The union's position is for Article III, Health insurance and Welfare, to read as follows:

Clearwater County shall provide hospitalization /medical coverage and shall pay the full rate for single coverage through December 31, 2015, Employees electing family coverage shall contribute to said coverage by paying thirty five percent (35%) of said premium through December 31, 2015. January 1, 2015 the County will contribute nine hundred dollars and forty five cents ($900.45) per month toward the cost of the monthly premium for Teamsters Local No 346's health insurance plan.[1]

In support of this position the union made the following arguments:

1. The union argued that the current 65-35% split has been in place for years and through two arbitration cases in which the County made the same argument before other arbitrators that it is making here – unsuccessfully. The union cited to the Powers and Miller arbitrations from 2012 and 2014 respectively, discussed more below, and asserted that both these arbitrators awarded the 65-35% split upon due reflection and consideration. The union noted that nothing has changed nor was anything offered to compensate the union for giving up the current arrangement.

2. The union asserted that the County has offered nothing either in terms of a compelling reason for the change from the current split to the 50-50 split it seeks. Neither has the County offered a quid pro quo or other type of offer to negotiate a different split.

3. The union also asserted that interest arbitration is supposed to reflect what the parties would have negotiated had these essential employees been able to negotiate a resolution to this issue. Here though the County seeks to gain something without negotiation or consideration to that union.

4. The union pointed to the Powers award in *Clearwater County and IBT 320*, BMS #11-PN-0927 (March 13, 2012) and asserted that she considered the County's arguments and rejected them as follows:

> "An arbitrator in an interest arbitration does not ordinarily plow new ground for the parties. The parties should work out their problems at the bargaining table whenever possible. If there is a demonstrable problem that can easily be solved with contractual language and one or the other party has known about and refused over time to address, then arbitration may be the vehicle to bring about a change. The burden of persuasion is on the party proposing a change from current language. Sometimes the parties negotiate a quid pro quo exchange for changes in the agreement. Arbitrators can also make such a change but the burden on the proponent is high." Slip op at page 11-12.

[1] The local referenced in the language was #346 but it was clear that these employees are now represented by #320.

5. The union noted that Arbitrator Powers then awarded the union's position and keep the 35% employee/65% employer family plan contribution scheme in place. She also rejected the County's claim there that internal consistency compelled a change to the 50-50 split it sought then and seeks now. The union asserted that while the County's argument seems to be based on equity, i.e., that other units have the 50-50- split, this argument ignores the clear pronouncement by Arbitrator Powers and later accepted by Arbitrator Miller, that "If a change is to occur, the parties should bargain it."

6. The union also cited the Miller award from 2014, *Clearwater County and IBT #320,* BMS # 12-PN-1211 (October 22, 2014), in support of its argument here. He too was faced with the same issue that is presented here regarding the contribution towards the health plan and whether it should remain at the 35% employee - 65% employer contribution as awarded by Arbitrator Powers, and which was originally negotiated by the parties, or whether that contribution should change to a 50-50- split as proposed by the County. He rejected the County's arguments there that were virtually identical to those made here.

7. The union also noted that there was a change in health plans prior to the Miller award that the County argued constituted a quid pro quo for a change in the contribution percentages but that Arbitrator Miller took that into account yet awarded the 65%-35% split, just as Arbitrator Powers did only two years before. Arbitrator Miller noted that the County Board supported the changeover to the Local #346 health plan and that while it may have believed that this was an agreement to change to a 50-50 split, there was no "meeting of the minds" on that issue and awarded the 35% employee - 65% employer split.

8. The union argued that nothing has changed except the year in which the County's arguments are being made. The same testimony was offered before Arbitrator Miller as was offered here and should be similarly rejected for the very same reasons Arbitrator Miller did so in his award from 2014.

Accordingly, the union asserted that the 35% employee - 65% employer split should remain in place.

COUNTY'S POSITION

The County's position was for a 50-50% split in health insurance increases. The County amended its final position at the hearing and changed the final dollar figure in its final position from $838.00 per month for the County contribution to $886.04 per month. This would result in a 50-50-split of the cost of health insurance premium, as more fully described below. In support of this position the County made the following contentions:

1. The County argued that despite the earlier awards from Arbitrators Powers and Miller, there is a strong internal pattern now for a 50-50% split in health insurance premiums.

2. The County further noted, as did Arbitrator Miller in his 2014 award, that the generally accepted standard in interest arbitration is to determine what the parties would have negotiated had they been able to voluntarily negotiate an agreement for themselves. Here several other units in the County have done exactly that and have voluntarily negotiated a 50-50 split for their health insurance premiums. Thus, not only is there a strong policy in favor of internal consistency with regard to fringe benefits, there is also strong evidence that the parties would have negotiated a 50-50 split had they been able to voluntarily negotiate a settlement to this somewhat chronic issue.

3. Further, the County argued that Commissioner Nelson brought the proposal to change to the Teamsters #346 health plan the Board was led to believe that this was also an agreement to go to the 50-50 split. He testified that the Board would not have agreed to the change in health plans had they known that the union still wanted the 65-35% split. The County thus argued that there was a quid pro quo offered for this change even though the County saved some cost as well.

4. The County used Beltrami, Hubbard, Lake of the Woods and Mahnomen Counties as the appropriate comparison group of Minnesota Counties and noted that when compared to those counties, Clearwater County has a well below average tax capacity and yet a very high per capita tax rate. Its net taxes payable are well below average as well. These facts have persisted for several years; including prior to the Miller award in 2014.

5. The County noted that these factors are true for the contiguous counties of Becker, Beltrami, Hubbard, Mahnomen, Polk and Pennington Counties as well. The County asserted that it is a small, thinly populated and somewhat poor county and must be fiscally responsible in all its dealings, including the payment of health insurance premiums.

6. The County acknowledged that typically interest arbitration does not involve external comparisons of health insurance benefits due to very different bargaining histories and other factors, but noted that the contributions are quite high in comparison to many of the other counties. The County argued that internal comparison of health insurance benefits is the generally accepted methodology for determining these benefits in interest arbitration. The County further argued that the majority of the internal units have, and have negotiated for, a 50-50 split. Thus, both from the standpoint of the internal comparisons as well as the notion of determining what the parties would have negotiated for themselves had they been allowed to, the 50-50 split is the more appropriate result.

7. Internally, the County noted that the highway, courthouse and social services units are all at the 50-50% rate. See, AFSCME #922 and Clearwater County contracts submitted by the County at hearing. Only the Communication and Corrections Offices, CCO's, and the Sheriff deputy units retain the 35-65% split and the County argued that the Sheriff's simply follow the pattern established by the CCO unit.

8. Having two different rates for contributions creates dissension among employees and employee groups and a more difficult insurance plan to administer. The County argued that there is thus a compelling reason to create consistency in the internal pattern of settlements and health insurance payments by employees

9. The County acknowledged that Arbitrator Miller ruled that there was no meeting of the minds between the parties on the question of the appropriate split and ruled in the union's favor. The County argued that his award is flawed and ignored the fact that after the employees switched to a different health insurance plan; the 65%-35% split was no longer operative and was effectively eliminated with the $800.00 contribution at the time. Thus, the County argued, the 65%-35% split was eliminated and is no longer relevant and should be rejected in favor of the 50-50- split now in effect for the rest of the County bargaining units, except for the deputies, who are simply awaiting the result here.

10. The County further assailed the Miller award by noting that it failed to justify a deviation from the well-established 50-50 plan in place for the other County units. The County argued that it provides a variety of health plans and that Arbitrator Miller's reasoning is also simply wrong on the question of payment of single coverage – he found that the County did not pay for full single coverage yet the documents showed that the County does. The County asserted most adamantly that it did provide a quid pro quo for the change during the negotiations for the prior CBA and that Arbitrator Miller should therefore have awarded the County's position then.

The County urges an award of a 50-50% split in health insurance increases.

DISCUSSION

This issue has arisen at least twice before and has been decided by two well-regarded arbitrators in 2012 and in 2014. The County seeks to change the existing language for a 35% employee - 65% employer split in health insurance premium payments. As noted above, the County

amended its dollar figure form the final position certified by the BMS to $886.04 per month. This would be a 50-50% split if awarded.

As Arbitrator Miller discussed, some brief history is in order. There are 6 bargaining units in the County, including the Communication and Corrections Officers, CCO's. The highway and social services employees are represented by AFSCME. Public Health Nurses are represented by the Minnesota Nurses Association. Courthouse and deputies are represented by IBT #320 along with the CCO's in this unit.

As of 2011 all affected County employees were covered by the County health and welfare plans. The evidence further showed that initially, there was a negotiated 35% employee - 65% employer split in health insurance premiums. There was very little evidence presented as to how long this was in place prior to 2011 or what the negotiations entailed that led to it. All that was established is that there was at one point a negotiated 35-65% split.

The County sought to change that in 2011. It was shown that the social services, nurses and deputies negotiated a 50-50% split in the health insurance premiums at that time. The County began seeking to have that be a consistent pattern across all other units as well. Currently, the social services, public health, highway and courthouse unit (represented by IBT #320 as well) contain the 50-50 split language. The CCO's and Sheriff's deputies retain the 35% employee - 65% employer split language. As in 2014, the deputies are awaiting an award in this matter to determine how to proceed in their negotiations/interest arbitration.

The County sought to change the CCO's to the 50-50 split in place for other units. The argument reflected in Arbitrator Powers' award was quite similar to that presented in this matter. The County argued that it seeks internal consistency and that those units who can voluntarily negotiate a settlement did so and agreed to the 50-50 split. The county argued before Arbitrator Powers that this should support an award in its favor.

Noting the generally accepted principle that interest arbitration should reflect, to the extent possible, what the parties would have negotiated had they been able to voluntarily negotiate an agreement for themselves, Arbitrator Powers rejected the County's claim. She noted that there was not complete internal consistency and that the burden of persuasion placed on the party seeking a change in existing contractual language is indeed high.

It is also generally accepted that the party seeking such a change must show a compelling need for that change based on the unique facts of each case or that there was an appropriate quid pro quo offered in exchange for it. Arbitrator Powers apparently found neither and awarded the union's position. In so doing she appropriately noted that the parties should attempt to negotiate such changes at the bargaining table rather than relying on an interest arbitrator to do it for them.

The facts then showed that sometime prior to the Miller award, the County changed health insurance plans. Commissioner Nelson testified before Arbitrator Miller as he did in this matter, and indicated that during bargaining for the 2013-2015 contract, the CCO unit proposed a switch to a different health insurance plan.

Commissioner Nelson indicated that he proposed this to the County Board and that he supported it. The evidence showed that the plan actually saved the County some money as well. He testified that he and the Board thought that accepting that plan would result in the elimination of the 35% employee - 65% employer. The union however did not share that understanding. That testimony was presented here in almost the same form as it was before Arbitrator Miller as well.

Very little changed between the time of his award and this hearing. There was no evidence of any change in health insurance plans nor any evidence of a compelling need to change the plans nor evidence of an additional offer to the union sufficient to carry the burden of persuasion to warrant the change the County seeks.

The overall record showed that the County offered no quid pro quo for its repeat proposal during this round of bargaining to go to a 50-50% split for health insurance premiums. Indeed, the evidence showed that despite mediation and negotiation by the parties, the County remained adamant that it would stay with a 50-50% split.

Arbitrator Miller, knowing that the County had changed its health insurance plan as Commissioner Nelson testified to, again rejected the County's claimed 50-50 split and maintained the 35% employee - 65% employer split.

Much of the County's argument in this case centered on assailing the logic of the Miller award and arguing that it was flawed both factually and logically. A review of Arbitrator Miller's award though falls short of finding that it was so flawed or incorrect as to warrant its overturning in this matter – as the County suggests. It was clear that he thoroughly examined the facts, which were frankly similar to those presented here, and determined that there was an inadequate quid pro quo to warrant a change in the split in health insurance. He noted that the County also saved cost in changing to the different health plan and concluded that that change did not constitute a sufficient quid pro quo to warrant an arbitrable mandated change in the contract. Those findings were not disturbed by the evidence presented here and neither will the conclusions Arbitrator Miller reached.

The parties are again back in interest arbitration making essentially the same arguments that were made before Arbitrator Powers and virtually the identical arguments that were made before Arbitrator Miller. There was no evidence of anything more that was offered by the County in exchange for its proposed change in the existing language. There was also no evidence of a compelling reason to change this other than what was offered in the previous two arbitrations over this very issue.

The County's argument is essentially that other units, that do not have the right to interest arbitration, have voluntarily negotiated a 50-50% split and that it now justifiably seeks the same for this unit to maintain internal consistency for the reasons set forth above. Without the prior arbitral awards this might well have been a persuasive argument. Internal consistency is generally accepted as a desirable goal for benefits such as health insurance. Here though the parties' history is a more compelling factor, especially in light of two well-reasoned and appropriately decided arbitral awards in just the past few years.

Moreover, there was no evidence that anything significant has changed to compel a different result and very little showing of give and take bargaining on this issue. Without more the County's arguments fall short of the high burden Arbitrator Powers referenced. At best, the County's argument is that it offered what it thought was a sufficient benefit in exchange for the change from the 35%-65% split but the evidence before Arbitrator Miller, and here, did not clearly establish that. There was also nothing further offered in these negotiations for this contract to warrant the change the County seeks.

While the County's desire for internal consistency in health insurance premiums is both understandable and even admirable, the County must by now realize that the writing is on the wall so to speak and that simply making the same arguments without a showing of a quid pro quo or other compelling need is an uphill climb to be sure. There was for example no evidence that the County is unable to pay what the union is claiming.

The County submitted considerable evidence showing its tax capacity and the per capita rates as noted above. There was insufficient evidence on his record though to establish that the County would not be able to pay these premiums with the current 35-65 split nor was there any other evidence offered to demonstrate a compelling need for the change.

As Arbitrator Powers aptly noted, it is not for interest arbitration to "plow new ground" absent some compelling showing of a need to do so.

Thus, on this record, there being no such showing and no evidence of a quid pro quo offered to the union in exchange for the County's proposed change, the result is clear and the union's position must be awarded. Accordingly, the evidence as a whole supports the union's position on the issue of health insurance increases.

AWARD

The union's position is awarded. The current 35% employee - 65% employer split of payment of health insurance premiums shall remain in place.

Dated: January 13, 2016

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Jeffrey W. Jacobs, arbitrator